

**CITY OF BONITA SPRINGS
ORDINANCE NO. 18 – 07**

AN AMENDMENT TO BONITA SPRINGS LAND DEVELOPMENT CODE, CHAPTER 2, ARTICLE VI, DIVISIONS 3 AND 4, COMBINING REGIONAL AND COMMUNITY PARKS INTO A UNIFIED PARKS IMPACT FEE; AMENDING §2-235, DEFINITIONS; §2-236, IMPOSITION; §2-237, COMPUTATION OF AMOUNT; §2-239, BENEFIT DISTRICT ESTABLISHED; §2-242, REFUND OF FEES PAID; §2-244, EXEMPTIONS; AND, §2-245, CREDITS; DELETING §§2-274 THROUGH 2-288, THE FORMER COMMUNITY PARKS IMPACT FEE PROVISIONS; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, INCLUSION IN CODE AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes §166.01 authorizes cities to adopt ordinances for the exercise of its powers; and,

WHEREAS, the Bonita Springs City Council adopted its Land Development Code (LDC) which contains regulations applicable to the development of land in Bonita Springs; and,

WHEREAS, the Florida Legislature adopted the Florida Impact Fee Act finding that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth and further finding that impact fees are an outgrowth of the home rule power of local governments to provide certain services within its jurisdiction (Florida Statutes §163.31801 *et seq.*); and

WHEREAS, the City Council has the authority to adopt impact fees pursuant to Article VIII of the Constitution of the State, Florida Statutes, Chapter 166 and Sections 163.3201, 163.3202, and 380.06(16); and,

WHEREAS, LDC, Chapter 2, Article VI, establishes Bonita Springs impact fee base rate schedules and regulations applicable to new development for Roads, Parks, Fire and Emergency Medical Services, and Schools; and,

WHEREAS, Florida Statutes §163.31801 (a) requires that the calculation of impact fees be based on the most recent and localized data; and,

WHEREAS, the Bonita Springs City Manager approved a contract with Duncan and Associates, Inc., to review and update the City's impact fee schedules for roads and parks; and,

WHEREAS, the study prepared by Duncan and Associates, Inc., forms the basis of the proposed amendments herein for parks and are hereby adopted by the City Council; and,

WHEREAS, the Duncan and Associates, Inc., study and revised fee schedule relies upon the best available technical data at the time the study was prepared and the use of sophisticated methodology to determine the impacts of development in an effort to establish an appropriate level of impact fees based on most recent localized data.

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

SECTION ONE: AMENDMENTS TO BONITA SPRINGS LAND DEVELOPMENT CODE

The City of Bonita Springs Land Development Code Chapter 2, Article VI, Division 3, Sections 2-235 through 2-239, 2-242, 2-44, 2-45 and §§2-274 – 2-88 is hereby amended and replaced with new language underlined and deleted language cross-hatched, as follows:

DIVISION 3. - PARKS IMPACT FEE

Sec. 2-235. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building official means that officer who is so defined in chapter 4.

Building permit means an official document or certification issued by the building official authorizing the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure. In the case of a change in use or occupancy of an existing building or structure, the term "building permit" specifically includes certificates of occupancy and occupancy permits, as those permits are defined or required by city ordinance.

Capital improvement means land acquisition, site improvement, including landscape plantings and the removal of exotic vegetation, off-site improvements associated with a new or expanded regional parks, buildings and equipment. Off-site improvements may also include bikeways that connect to the park facility or along the city road network that are designed and used primarily for active recreation. Capital improvements do not include maintenance and operations.

Duplex has the same meaning given it in chapter 4.

Feepayer means a person applying to the city for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order for a type of land development activity specified in section 2-137(a), regardless of whether the person owns the land.

Hotel/motel has the same meaning given it in chapter 4.

Living unit has the same meaning given it in chapter 4.

Mobile home has the same meaning given it in chapter 4. Mobile homes not located within an established mobile home park will be treated as a single-family residence for impact fee calculation purposes.

Mobile home move-on permit means an official document or certification authorizing any purchaser, owner, mover, installer or dealer to move a mobile home onto a particular site. A mobile home move-on permit also includes a permit authorizing the tiedown of a park trailer in a mobile home zoning district.

Multiple-family building has the same meaning given it in chapter 4.

Park means a tract of land designated and used by the public for active and passive recreation.

Park trailer has the same meaning given it in chapter 4.

Private recreational facility has the same meaning given it in chapter 4.

Recreational vehicle has the same meaning given it in chapter 4.

Recreational vehicle development order means a final development order, as that term is used in chapter 3, permitting the placement of recreational vehicles on any area of land.

~~*Regional park* means a tract of land designated and used by the public for active and passive recreation. A regional park draws users from a larger area than a community park, frequently from the entire city and beyond, by providing access to especially attractive natural resources, amenities and specialized activities. The regional park standards are based upon several subclassifications of regional parks: district parks, nature preserves and special area regional parks.~~

Single-family residence has the same meaning given it in chapter 4.

Timeshare has the same meaning given it in chapter 4.

Townhouse has the same meaning given it in chapter 4.

Two-family attached has the same meaning given it in chapter 4.

(Ord. No. 13-21, § 1(2-304), 12-18-2013)

Sec. 2-236. - Imposition.

- (a) Except as provided in sections 2-243 through 2-245, any person who, after September 16, 1985, seeks to develop land by applying to the city for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order to make an improvement to land for one of the uses specified in section 2-237 will be required to pay a parks impact fee as set forth in LDC §2-237. ~~determined by the schedule which is on file in the city clerk's office.~~
- (b) No building permit, mobile home move-on permit or recreational vehicle development order for any activity requiring payment of an impact fee pursuant to

section 2-237 will be issued by the city unless and until the parks impact fee required by this division has been paid.

- (c) In the case of structures, mobile homes or park trailers moved from one location to another, a parks impact fee will be collected for the new location if the structure, mobile home or park trailer is a type of land development listed in section 2-237, regardless of whether parks impact fees had been paid at the old location, unless the use at the new location is a replacement of an equivalent use. If the structure, mobile home or park trailer so moved is replaced by an equivalent use, no parks impact fee will be owed for the replacement use. In every case, the burden of proving past payment of parks impact fees or equivalency of use rests with the feepayer.

(Ord. No. 05-02, § 3(2-305), 1-5-2005; Ord. No. 13-21, § 1(2-305), 12-18-2013)

Sec. 2-237. - Computation of amount.

- (a) At the option of the feepayer, the amount of the parks impact fee may be determined by the schedule below, ~~which is on file in the city clerk's office~~. The reference in the schedule to recreational vehicles refers to the number of recreational vehicle sites which are permitted by the applicable final development order.

Land Use Type	Unit	Parks Impact Fee per Unit	Current Fee (Sum of Regional and Community Park)
Single-family residence	Dwelling unit	<u>\$912.00</u>	\$872
Multiple-family building, duplex, two-family attached or townhouse	Dwelling unit	<u>\$690.00</u>	\$539
Mobile home not in mobile home park	Dwelling unit	<u>\$912.00</u>	\$649
Mobile home in MH Park	Per Pad	<u>\$668.00</u>	\$649
RV park site	Per Pad	<u>\$668.00</u>	\$649
Hotel/motel room	Room	<u>\$436</u>	\$596
Timeshare	Dwelling	<u>\$690.00</u>	\$1095

- (b) The fee schedule set forth above will go into effect on August 15, 2018. The fee schedule in effect prior to this ordinance will remain in effect until close of business, Tuesday, August 14, 2018 when the new fees take effect. When change of use, redevelopment or modification of an existing use requires the issuance of a building permit, mobile home move-on permit or recreational vehicle development order, the parks impact fee shall be based upon the net increase in the impact fee for the new use as compared to the previous use. However, should the change of use, redevelopment or modification result in a net decrease, no refunds or credits for past impact fees paid shall be made or created.
- (c) If the parks impact fee has been calculated and paid based on error or misrepresentation, it shall be recalculated and the difference refunded to the original feepayer or paid, whichever is applicable. If parks impact fees are owed, no ~~participating municipality or city~~ permits of any type may be issued for the building or structure in question, or for any other part of a development of which the building or structure in question is a part, while the fees remain unpaid, and the building official may bring any action permitted by law or equity to collect unpaid fees.
- (d) The person applying for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order may, at his option, submit evidence to the city manager or designee indicating that the fees set out in subsection (a) of this section are not applicable to the particular development. Based upon convincing and competent evidence, which shall be prepared and submitted in accordance with the city administrative code, the city manager or designee may adjust the fee to that appropriate for the particular development. The adjustment may include a credit for private recreational facilities provided to the development by the feepayer if the private recreational facilities serve the same purposes and functions as set forth in the comprehensive plan for parks.

(Ord. No. 05-02, § 3(2-306), 1-5-2005; Ord. No. 13-21, § 1(2-306), 12-18-2013)

Sec. 2-239. - Benefit district established.

For purposes of this division, there is hereby established a single parks impact fee benefit district. Subdistricts may be created by further legislation or by interlocal agreement.

(Ord. No. 05-02, § 3(2-308), 1-5-2005; Ord. No. 13-21, § 1(2-308), 12-18-2013)

Sec. 2-242. - Refund of fees paid.

- (a) If a building permit, mobile home move-on permit or recreational vehicle development order expires, is revoked or is voluntarily surrendered, and is therefore voided, and no construction or improvement of land, including moving a mobile

home onto land, has been commenced, then the feepayer shall be entitled to a refund of the parks impact fee paid as a condition for its issuance, except that three percent of the fee paid shall be retained as an administrative fee to offset the cost of processing the refund. Subject to the limitations set forth in subsection (b) of this section, the feepayer shall be entitled to a refund of the parks impact fee paid excluding the administrative fee. No interest shall be paid to the feepayer on refunds due to non-commencement.

- (b) No refund shall be allowed for any expired permit or development order which was obtained with the use of credits, except for that portion of the parks impact fee which was not paid by credit, in which case the administrative fee described in subsection (a) of this section shall be deducted from the portion of the fee which was not paid by credit.
- (c) Any funds not expended or encumbered by the end of the calendar quarter immediately following six years from the date the parks impact fee was paid shall, upon application of the feepayer within 180 days of that date, be returned to the feepayer with interest at the rate of ~~six~~ three percent per annum.

(Ord. No. 05-02, § 3(2-311), 1-5-2005; Ord. No. 13-21, § 1(2-311), 12-18-2013)

Sec. 2-244. - Exemptions.

- (a) The following are exempted from payment of the parks impact fee:
 - (1) Alteration or expansion of an existing building or use of land, where no additional living units will be produced and where the use is not changed.
 - (2) The construction of accessory buildings or structures that will not produce additional living units.
 - (3) The replacement of an existing lawfully permitted building, mobile home, park trailer or structure, provided that no additional vehicular trips will be produced than those produced by the original use of the land where the original permit was issued on or before September 16, 1985.
 - (4) Building permits that were issued for commercial buildings and residential dwelling units, which have been reinstated by the Building Official in accordance with the Florida Building Code are exempt from the payment of impact fee increases that occurred after issuance of the original permit. However, no impact fee refund or credit will be granted if a net decrease results. The replacement of a building, mobile home, park trailer or structure, that was constructed or placed after September 16, 1985, where the correct roads impact fee was paid or otherwise provided for, with a new building, mobile home, park trailer or structure of the same use and at the same location; provided that no additional vehicular trips will be produced than those produced by the original use of the land.

- (5) An amendment to a recreational vehicle development order; provided the amendment does not increase the number of recreational vehicle units permitted.
 - (6) A building permit obtained by or for the United States of America, the state or the county school board.
 - (7) A building permit, mobile home move-on permit or recreational vehicle development order for which the parks impact thereof has been or will be paid or provided for pursuant to a written agreement, zoning approval or development order which, by the written terms thereof, clearly and unequivocally was intended to provide for the full mitigation of the projected impact.
 - (8) A building permit, mobile home move-on permit or recreational vehicle development order that does not result in an additional living unit.
 - (9) Building permits that obtain a banked impact fee credit from the city. The city hereby grants to itself the authority to bank impact fee credits as a result of any public improvement project occurring on or after April 15, 2000, within the city's boundary. The city may bank credits when buildings, mobile homes, park trailers or structures are physically removed but not replaced in the same location. The city council, by resolution, may use the banked impact fee credit for a city-operated economic development or affordable housing program, or may grant nonprofit corporations who are building affordable housing credits specified by amount and type, if available in the city's impact fee bank.
- (b) Exemptions must be claimed by the feepayer at the time of the application for a building permit, mobile home move-on permit or recreational vehicle development order. Any exemptions not so claimed will be deemed waived by the feepayer.

(Ord. No. 05-02, § 3(2-313), 1-5-2005; Ord. No. 13-21, § 1(2-313), 12-18-2013)

Sec. 2-245. - Credits.

- (a) Credits are subject to the following:
- (1) *Prohibition.* No credit will be given for private recreational facilities, except pursuant to an independent fee calculation prepared and accepted in accordance with section 2-237(d).
 - (2) *Capital improvement to park facilities.* All other capital improvements for approved parks may generate park impact fee credits in amounts to be established pursuant to subsection (a)(3) of this section or by an appropriate interlocal agreement. The right to determine whether a capital improvement will be approved for credit purposes lies exclusively with the city, unless otherwise provided for in an appropriate interlocal agreement, or unless the improvement is required under a participating municipality, state, county or city development or zoning approval, in which case credits will be given to the extent required by law. The city will issue park impact fee credits for the value of critical occupied

habitat in accordance with section 3-456(e)(3) when the size of habitat preserved on a given project exceeds the open space requirements of chapter 3.

(3) *Conditions of credit approval.* Credit for park capital improvement construction or land dedication is subject to the following:

a. *Capital improvement construction.* When a person requests credit for construction of an approved park facility, he must submit a project description in sufficient detail and with complete cost estimates prepared by qualified professionals so as to enable the city manager or designee to verify the cost estimates and thereby determine the appropriate amount of credit to recommend to the city council.

b. *Land dedication.*

1. When a person requests credit for land dedication for approved park facilities, he must present the following:

- (i) A survey of the land to be dedicated, certified by a professional land surveyor or registered land surveyor, each of whom are licensed in this state;
- (ii) A specimen of the deed which he proposes to use to convey title to the appropriate governmental body;
- (iii) An ALTA Form B title insurance policy in the amount equal to the approved value of the credits. The policy must be issued by a company satisfactory to the city attorney or designee and verify that the proper deed will convey unencumbered fee simple title to the appropriate governmental body;
- (iv) Property appraisals prepared by qualified professionals that appraise the land as part of the whole development of impact, planned development, or parent parcel; and
- (v) A certified copy of the most recent assessment of the property for tax purposes.
- (vi) An affidavit of interest in real property in accord with Florida Statutes §286.23. The affidavit must certify to Bonita Springs the name and address of every person having a beneficial interest in the real property, however small or minimal. The disclosure affidavit must specifically identify the property to be conveyed and be sworn before a notary.

These submittals will be reviewed by the city manager or designee in making the decision to recommend credits to the city council.

2. Except where a dedication is made pursuant to a condition of zoning approval or development of impact development order, the appraiser must value the land at its current zoning without any enhanced value that could be attributed to improvements on the parent parcel. If the

land in question is subject to a valid agreement, zoning approval, or development order that prescribes a different valuation, that document will control the date of valuation. If the dedication is made pursuant to a condition of zoning or other development approval and is not a site-related improvement and the condition does not specifically prescribe otherwise, the land will be valued based on the value of the land as it existed prior to the approval that contains the condition of dedication. The city manager or designee retains the right to independently determine the amount of credit to be recommended by securing other property appraisals for those improvements or land dedications. In every case, parks impact fee credits will be calculated so as to be consistent with F.S. §380.06 (5) ~~(46)~~.

- (4) *Timing of credit issuance.* Credits for construction will be created when the construction is complete and accepted by the appropriate governmental body for maintenance or when the feepayer posts security for the costs of the construction. Credits for land dedication will be created when the title to the land has been accepted by the appropriate governmental body and recorded in the official records of the clerk of circuit court. Security in the form of cash, a performance bond, irrevocable letter of credit or escrow agreement must be posted with the city council, made payable to the city in an amount approved by the city manager or designee equal to 110 percent of the full cost of construction. If the park construction project will not be completed within one year of the acceptance of the offer by the city, the amount of the security will be increased by ten percent, compounded for each year of the life of the security. The security must be reviewed and approved by the city attorney or designee prior to acceptance by the city. If the park will be owned by a participating municipality, the city may assign its right in the security to the municipality if permitted by law.
- (5) *Transferability.* Parks impact fee credits are transferable. Transferable credits may be sold, assigned or conveyed as set forth in the city administrative code. Credits may be used to pay or offset parks impact fees required by this division. Unless a longer period is specifically authorized by the city council, transferable credits must be used within six years of the date created. The creation date is the date the instruments conveying legal title to the land or improvements given in exchange for credits were recorded in the city's official record book. The creation date for credits pursuant to prepayment of fees under section 2-238 will be the date the prepayment is received by the city. If park impact fees are increased before the credits are used, the unused transferable credits will be increased at the time they are used in the same percentage that the fee prescribed in section 2-237 for the particular listed use, rounded to the nearest dollar. Credits not used within six years of issue will be canceled by the building official. Any person who accepts credit in exchange for the dedication of land or improvements does so subject to the limitations on the use, duration, non-refund provisions and other restrictions prescribed in this division.

- (6) *Use of credits.* Unless converted to transferable form pursuant to subsection (a)(7) of this section, park impact fee credits must be used on a first applied for, full credit basis. This rule applies to permits requested on any part of the original tract. For purposes of this section, the term "original tract" means the area developed or approved for development, as part of a dedication of land or improvements for which the credits were created, to the extent that credits are available. This will be done regardless of whether the feepayer owns the land at the time the credit was created, and regardless of whether the ratio of the credit requested to the original full credit created is disproportionate to the ratio of the land covered by the requested permit to the original tract. In addition, this rule will apply regardless of whether the owner of the original tract has assigned or failed to assign the credits to the current owner of the land covered by the requested permit. The burden of proving ownership or agency lies exclusively on the person claiming it.
- (7) *Withdrawal.* Any person who offers land or improvements in exchange for credits may withdraw the offer prior to the transfer of legal title to the land or improvements and pay the impact fees required by this division.
- (b) Feepayers claiming credits must submit documentation sufficient to permit the building official to determine whether the credits claimed are due and, if so, the amount of credits.
- (c) Credits must be claimed by the feepayer at the time of the application for a building permit, mobile home move-on permit or recreational vehicle development order. Any credits not so claimed will be deemed waived by the feepayer.
- (d) Once used, credits will be canceled and may not be reestablished even if the permit for which they were used expires without construction.
- (e) Any person seeking credits for dedication of land must meet with the city attorney or designee, division of planning and construction, and city lands staff to seek agreement on appraisal methodology and assumptions before preparing appraisals for valuation of land to be dedicated.

(Ord. No. 05-02, § 3(2-314), 1-5-2005; Ord. No. 13-21, § 1(2-314), 12-18-2013)

Secs. 2-248—2-309 -273. - Reserved.

~~DIVISION 4. COMMUNITY PARKS IMPACT FEE~~

~~Sec. 2-274. Statutory authority.~~

~~The city council has the authority to adopt this division pursuant to Article VIII of the Constitution of the State, F.S. ch. 166 and F.S. §§ 163.31801, 163.3201, 163.3202 and 380.06(16).~~

(Ord. No. 05-02, § 3(2-341), 1-5-2005; Ord. No. 13-21, § 1(2-341), 12-18-2013)

~~Sec. 2-275. Intent and purpose of division.~~

- ~~(a) This division is intended to implement and be consistent with the comprehensive plan.~~
- ~~(b) The purpose of this division is to regulate the use and development of land so as to ensure that new development bears a proportionate share of the cost of capital expenditures necessary to provide community parks in the city as contemplated by the comprehensive plan.~~

~~(Ord. No. 05-02, § 3(2-343), 1-5-2005; Ord. No. 13-21, § 1(2-343), 12-18-2013)~~

~~Sec. 2-276. Definitions.~~

~~The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Building official* means that officer who is so defined in chapter 4.~~

~~*Building permit* means an official document or certification issued by the building official authorizing the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure. In the case of a change in use or occupancy of an existing building or structure, the term "building permit" specifically includes certificates of occupancy and occupancy permits, as those permits are defined or required by county ordinance.~~

~~*Capital improvement* means land acquisition, site improvements, including landscape plantings and the removal of exotic vegetation, off-site improvements associated with a new or expanded community park, buildings and equipment. Capital improvements include bikeways along the city road network that are designed and used primarily for active recreation. Capital improvements do not include maintenance and operations.~~

~~*Community park* means a tract of land designated and used by the public primarily for active recreation but also used for educational and social purposes and passive recreation. Community parks also include bikeways along the city road network that are designed and used primarily for active recreation. A community park generally serves a specific community composed of at least several neighborhoods. The community park standards are based upon several subclassifications of community parks: standard community parks, community recreation centers, community pools and school parks. The term "community park" specifically includes school sites.~~

~~*Duplex* has the same meaning given it in chapter 4.~~

~~*Feepayer* means a person applying to the city, for the issuance of a building permit, mobile home move on permit or recreational vehicle development order for a type of land development activity specified in section 2-278(a), regardless of whether the person owns the land.~~

~~*Hotel/motel* has the same meaning given it in chapter 4.~~

~~Living unit has the same meaning given it in chapter 4.~~

~~Mobile home has the same meaning given it in chapter 4. Mobile homes not located within an established mobile home park will be treated as a single family residence for impact fee calculation purposes.~~

~~Mobile home move on permit means an official document or certification authorizing any purchaser, owner, mover, installer or dealer to move a mobile home onto a particular site. The term "mobile home move on permit" also includes a permit authorizing the tiedown of a park trailer in a mobile home zoning district.~~

~~Multiple family building has the same meaning given it in chapter 4.~~

~~Park trailer has the same meaning given it in chapter 4.~~

~~Private recreational facility has the same meaning given it in chapter 4.~~

~~Recreational vehicle has the same meaning given it in chapter 4.~~

~~Recreational vehicle development order means a final development order, as that term is used in chapter 3, permitting the placement of recreational vehicles on any area of land.~~

~~Single family residence has the same meaning given it in chapter 4.~~

~~Timeshare has the same meaning given it in chapter 4.~~

~~Townhouse has the same meaning given it in chapter 4.~~

~~Two family attached has the same meaning given it in chapter 4.~~

~~(Ord. No. 13-21, § 1(2-344), 12-18-2013)~~

~~Sec. 2-277. Imposition.~~

~~(a) Except as provided in sections 2-284 through 2-286, any person who seeks to develop land by applying to the city for the issuance of a building permit, mobile home move on permit or recreational vehicle development order to make an improvement to land for one of the uses specified in section 2-278 will be required to pay a community parks impact fee in the manner and amount set forth in this division.~~

~~(b) No building permit, mobile home move on permit or recreational vehicle development order for any activity requiring payment of an impact fee pursuant to section 2-278 will be issued by the city unless and until the community parks impact fee required by this division has been paid.~~

~~(c) In the case of structures, mobile homes or park trailers moved from one location to another, a community parks impact fee will be collected for the new location if the structure, mobile home or park trailer is a type of land development listed in section 2-278, regardless of whether community parks impact fees had been paid at the old location, unless the use at the new location is a replacement of an equivalent use. If the structure, mobile home or park trailer so moved is replaced by an equivalent use, no community parks impact fee will be owed for the replacement use. In every~~

~~case, the burden of proving past payment of community parks impact fees or equivalency of use rests with the feepayer.~~

~~(Ord. No. 05-02, § 3(2-345), 1-5-2005; Ord. No. 13-21, § 1(2-345), 12-18-2013)~~

~~Sec. 2-278. Computation of amount.~~

- ~~(a) At the option of the feepayer, the amount of the community parks impact fee may be determined by the schedule which is on file in the city clerk's office. The reference in the schedule to recreational vehicles refers to the number of recreational vehicle sites which are permitted by the applicable final development order.~~
- ~~(b) When change of use, redevelopment or modification of an existing use requires the issuance of a building permit, mobile home move on permit or recreational vehicle development order, the community parks impact fee shall be based upon the net increase in the impact fee for the new use as compared to the previous use. However, should the change of use, redevelopment or modification result in a net decrease, no refunds or credits for past impact fees paid shall be made or created.~~
- ~~(c) If the community parks impact fee has been calculated and paid based on error or misrepresentation, it shall be recalculated and the difference refunded to the original feepayer or paid, whichever is applicable. If community parks impact fees are owed, no participating municipality or city permits of any type may be issued for the building or structure in question, or for any other part of a development of which the building or structure in question is a part, while the fees remain unpaid, and the building official may bring any action permitted by law or equity to collect unpaid fees.~~
- ~~(d) The person applying for the issuance of a building permit, mobile home move on permit or recreational vehicle development order may, at his option, submit evidence to the city manager or designee indicating that the fees on file in the office of the city clerk are not applicable to the particular development. Based upon convincing and competent evidence, which shall be prepared and submitted in accordance with the city administrative code, the city manager or designee may adjust the fee to that appropriate for the particular development. The adjustment may include a credit for private recreational facilities provided to the development by the feepayer if the private recreational facilities serve the same purposes and functions as set forth in the comprehensive plan for community parks.~~

~~(Ord. No. 05-02, § 3(2-346), 1-5-2005; Ord. No. 13-21, § 1(2-346), 12-18-2013)~~

~~Sec. 2-279. Payment.~~

- ~~(a) The feepayer must pay the community parks impact fee required by this division to the building official prior to the issuance of the building permit, mobile home move on permit or recreational vehicle development order for which the fee is imposed. No building permit, mobile home move on permit or recreational vehicle~~

development order may be issued for development listed in section 2-278(a) by the city until the fee has been paid.

- ~~(b) The city is entitled to charge the applicant of a permit or development order for which community parks impact fees are payable under this division, an administrative fee equal to up to three percent of the community parks impact fees it collects. The administrative fee must be used to offset the costs in administering this division. The administrative fee must be paid in cash.~~
- ~~(c) In lieu of cash, community parks impact fee may be paid by the use of credits created in accordance with the provisions of sections 2-284 and 2-286.~~
- ~~(d) All funds collected pursuant to this division must be promptly transferred for deposit into the community parks impact fee trust fund to be held in separate accounts as determined in section 2-281 and used solely for the purposes specified in this division.~~

~~(Ord. No. 05-02, § 3(2-347), 1-5-2005; Ord. No. 08-21; Ord. No. 13-21, § 1(2-347), 12-18-2013)~~

~~Sec. 2-280. Benefit districts established.~~

~~The corporate limits of the city shall constitute the community parks impact fee benefit district. Subdistricts may be created by further legislation or by interlocal agreement.~~

~~(Ord. No. 05-02, § 3(2-348), 1-5-2005; Ord. No. 13-21, § 1(2-348), 12-18-2013)~~

~~Sec. 2-281. Trust funds.~~

- ~~(a) There is hereby established a community parks impact fee trust fund, Subsidiary accounts may be established for subdistricts created by interlocal agreement.~~
- ~~(b) Funds withdrawn from these accounts must be used in accordance with the provisions of section 2-282.~~

~~(Ord. No. 05-02, § 3(2-349), 1-5-2005; Ord. No. 13-21, § 1(2-349), 12-18-2013)~~

~~Sec. 2-282. Use of funds.~~

- ~~(a) Funds collected from community parks impact fees shall be used for the purpose of capital improvements for community parks. Except as provided in subsection (c) of this section, community parks impact fee collections, including any interest earned thereon, less administrative costs retained pursuant to subsection (d) of this section, shall be used exclusively for capital improvements for community parks. These impact fee funds shall be segregated from other funds and shall be expended in the order in which they are collected. Funds may be used or pledged in the course of bonding or other lawful financing techniques, so long as the proceeds raised thereby are used for the purpose of capital improvements for community parks. If these funds or pledge of funds are combined with other revenue sources in~~

~~a dual or multipurpose bond issue or other revenue raising device, the proceeds raised thereby shall be divided and segregated in such a fashion that the amount of such proceeds reserved for community park purposes bears the same ratio to the total funds collected that the community parks impact fee funds used or pledged bear to the total funds used or pledged.~~

- ~~(b) Each fiscal period the city manager will present to the city council a proposed capital improvement program for community parks, assigning funds, including any accrued interest, to specific community park projects. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in the community parks impact fee trust funds until the next fiscal period, except as provided by the refund provisions of this division.~~
- ~~(c) The city collecting community parks impact fees shall be entitled to retain up to three percent of the community parks impact fees it collects in cash, or by a combination of cash and credits, as an administrative fee, to offset the costs of administering this division.~~

~~(Ord. No. 05-02, § 3(2-350), 1-5-2005; Ord. No. 13-21, § 1(2-350), 12-18-2013)~~

~~Sec. 2-283. Refund of fees paid.~~

- ~~(a) If a building permit, mobile home move on permit or recreational vehicle development order expires, is revoked or is voluntarily surrendered, and is therefore voided, and no construction or improvement of land, including moving a mobile home onto land, has been commenced, then the feepayer shall be entitled to a refund of the community parks impact fee paid as a condition for its issuance, except three percent of the fee paid, which shall be retained as an administrative fee to offset the costs of processing the refund. Subject to the limitations set forth in subsection (b) of this section, the feepayer shall be entitled to a refund of the community parks impact fee paid excluding the administrative fee. No interest shall be paid to the feepayer on refunds due to non-commencement.~~
- ~~(b) No refund shall be allowed for any expired permit or development order which was obtained with the use of credits, except for that portion of the community parks impact fee which was not paid by credit, in which case the three percent administrative fee described in subsection (a) of this section shall be deducted from the portion of the fee which was not paid by credit.~~
- ~~(c) Any funds not expended or encumbered by the end of the calendar quarter immediately following six years from the date the community parks impact fee was paid shall, upon application of the feepayer within 180 days of that date, be returned to the feepayer with interest at the rate of six percent per annum.~~

~~(Ord. No. 05-02, § 3(2-351), 1-5-2005; Ord. No. 13-21, § 1(2-351), 12-18-2013)~~

~~Sec. 2-284. Prepayment of fees.~~

~~If required or specifically permitted by the terms of a development order adopted pursuant to F.S. ch. 380, or by an agreement made by the city pursuant to its home rule powers granted in Article VIII of the Constitution of the State and F.S. § 125.01, or by a development agreement made pursuant to F.S. §§ 163.3220—163.3243, the Florida Local Government Development Agreement Act, and any ordinance adopted under the enabling authority thereof, any person who desires to prepay community parks impact fees may do so by delivering a certified check or cashier's check to the building official with a letter identifying the amount of community parks impact fees prepaid. The city will issue credit equal to the prepayment subject to the express terms of the development order, agreement or development agreement.~~

~~(Ord. No. 05-02, § 3(2-352), 1-5-2005; Ord. No. 13-21, § 1(2-352), 12-18-2013)~~

~~Sec. 2-285. Exemptions.~~

- ~~(a) The following are exempted from payment of the community parks impact fee:~~
- ~~(1) Alteration or expansion of an existing building or use of land, where no additional living units will be produced and where the use is not changed.~~
 - ~~(2) The construction of accessory buildings or structures that will not produce additional living units.~~
 - ~~(3) The replacement of an existing lawfully permitted building, mobile home, park trailer or structure, where the original permit was issued on or before September 16, 1985.~~
 - ~~(4) The replacement of a building, mobile home, park trailer or structure, which was constructed or placed after September 16, 1985, where the correct community parks impact fee was paid or otherwise provided for, with a new building, mobile home, park trailer or structure of the same use and at the same location; provided no additional living units will be produced than those produced by the original use of the land.~~
 - ~~(5) An amendment to a recreational vehicle development order; provided the amendment does not increase the number of recreational vehicle units permitted.~~
 - ~~(6) A building permit obtained by or for the United States of America, the state or the county school board.~~
 - ~~(7) A building permit, mobile home move on permit or recreational vehicle development order for which the community parks impact fee thereof has been or will be paid or provided for pursuant to a written agreement, zoning approval or development order which, by the written terms thereof, clearly and unequivocally was intended to provide for the full mitigation of the projected impact.~~
 - ~~(8) A building permit, mobile home move on permit or recreational vehicle development order that does not result in an additional living unit.~~

~~(9) Building permits that obtain a banked impact fee credit from the city. The city hereby grants to itself the authority to bank impact fee credits as a result of any public improvement project occurring on or after April 15, 2000, within the city's boundary. The city may bank credits when buildings, mobile homes, park trailers or structures are physically removed but not replaced in the same location. City council, by resolution, may use the banked impact fee credit for a city operated economic development or affordable housing program, or may grant nonprofit corporations who are building affordable housing credits specified by amount and type, if available in the city's impact fee bank.~~

~~(b) Exemptions must be claimed by the feepayer at the time of the application for a building permit, mobile home move on permit or recreational vehicle development order. Any exemptions not so claimed will be deemed waived by the feepayer.~~

~~(Ord. No. 05-02, § 3(2-353), 1-5-2005; Ord. No. 13-21, § 1(2-353), 12-18-2013)~~

~~Sec. 2-286. Credits.~~

~~(a) Credits are subject to the following:~~

~~(1) *Prohibition.* No credit will be given for private recreational facilities, except pursuant to an independent fee calculation prepared and accepted in accordance with section 2-278(d).~~

~~(2) *Capital improvement to community park facilities.* All other capital improvements for approved community parks may generate park impact fee credits in amounts to be established pursuant to subsection (a)(3) of this section. The right to determine whether a capital improvement will be approved for credit purposes lies exclusively with the city. The city will issue community park impact fee credits for the value of critical occupied habitat in accordance with section 3-456(e)(3) when the size of habitat preserved on a given project exceeds the open space requirements of chapter 3.~~

~~(3) *Conditions of credit approval.* Credit for community park capital improvement construction or land dedication is subject to the following:~~

~~a. *Capital improvement construction.* When a person requests credit for construction of an approved community park facility, he must submit a project description in sufficient detail and with complete cost estimates prepared by qualified professionals so as to enable the city manager or designee to verify the cost estimates and thereby determine the appropriate amount of credit to recommend to the city council.~~

~~b. *Land dedication.*~~

~~1. When a person requests credit for land dedication for approved community park facilities, he must present the following:~~

~~(i) A survey of the land to be dedicated, certified by a professional land surveyor or registered land surveyor, each of whom are licensed in this state;~~

- ~~(ii) A specimen of the deed which he proposes to use to convey title to the appropriate governmental body;~~
- ~~(iii) An ALTA Form B title insurance policy in the amount equal to the approved value of the credits. This policy must be issued by a company satisfactory to the city attorney or designee and verify that the proper deed will convey unencumbered fee simple title to the appropriate governmental body;~~
- ~~(iv) Property appraisals prepared by qualified professionals that appraise the land as part of the whole development of regional impact, planned development, or parent parcel; and~~
- ~~(v) A certified copy of the most recent assessment of the property for tax purposes.~~

~~These submittals will be reviewed by the city manager or designee in making the decision to recommend credits to the city council.~~

~~2. Except where a dedication is made pursuant to a condition of zoning approval or development of regional impact development order, the appraiser must value the land at its current zoning without any enhanced value that could be attributed to improvements on the parent parcel. If the land in question is subject to a valid agreement, zoning approval, or development order that prescribes a different valuation, that document will control the date of valuation. If the dedication is made pursuant to a condition of zoning or other development approval and is not a site-related improvement and the condition does not specifically prescribe otherwise, the land will be valued based on the value of the land as it existed prior to the approval that contains the condition of dedication. The city manager or designee retains the right to independently determine the amount of credit to be recommended by securing other property appraisals for those improvements or land dedications. In every case, community parks impact fee credits will be calculated so as to be consistent with F.S. § 380.06(16).~~

~~(4) *Timing of credit issuance.* Credits for construction will be created when the construction is complete and accepted by the appropriate governmental body for maintenance or when the feepayer posts security for the costs of the construction. Credits for land dedication will be created when the title to the land has been accepted by the appropriate governmental body and recorded in the official records of the clerk of circuit court. Security in the form of cash, a performance bond, irrevocable letter of credit or escrow agreement must be posted with the city council, made payable to the city in an amount approved by the city manager or designee equal to 110 percent of the full cost of construction. If the park construction project will not be completed within one year of the acceptance of the offer by the city, the amount of the security will be increased by ten percent, compounded for each year of the life of the security. The security must be reviewed and approved by the city attorney or designee~~

prior to acceptance by the city. If the park will be owned by a participating local government, the city may assign its right in the security to the local government.

- ~~(5) *Transferability.* Community parks impact fee credits are transferable. Transferable credits may be sold, assigned or conveyed as set forth in the city administrative code. Credits may be used to pay or offset community parks impact fees required by this division. Unless a longer period is specifically authorized by the city council, transferable credits must be used within six years of the date created. The creation date is the date the instruments conveying legal title to the land or improvements given in exchange for credits were recorded in the city's official record book. The creation date for credits pursuant to prepayment of fees under section 2-279 will be the date the prepayment is received by the city. If community park impact fees are increased before the credits are used, the unused transferable credits will be increased at the time they are used in the same percentage that the fee prescribed in section 2-280 for the particular listed use, rounded to the nearest dollar. Credits not used within six years of issue will be canceled by the building official. Any person who accepts credit in exchange for the dedication of land or improvements does so subject to the limitations on the use, duration, non-refund provisions and other restrictions prescribed in this division.~~
- ~~(6) *Use of credits.* Community park impact fee credits must be used on a first applied for, full credit basis. This rule applies to permits requested on any part of the original tract. For purposes of this section, the term "original tract" means the area developed or approved for development, as part of a dedication of land or improvements for which the credits were created, to the extent that credits are available. This will be done regardless of whether the feepayer owns the land at the time the credit was created, and regardless of whether the ratio of the credit requested to the original full credit created is disproportionate to the ratio of the land covered by the requested permit to the original tract. In addition, this rule will apply regardless of whether the owner of the original tract has assigned or failed to assign the credits to the current owner of the land covered by the requested permit. In determining ownership or agency, the building official may rely upon apparent authority; but he may, in his sole discretion, require proof of ownership or agency. The burden of proving ownership or agency lies exclusively on the person claiming it.~~
- ~~(7) *Withdrawal.* Any person who offers land or improvements in exchange for credits may withdraw the offer prior to the transfer of legal title to the land or improvements and pay the impact fees required by this division.~~
- ~~(b) Feepayers claiming credits must submit documentation sufficient to permit the building official to determine whether the credits claimed are due and, if so, the amount of credits.~~
- ~~(c) Credits must be claimed by the feepayer at the time of the application for a building permit, mobile home move on permit or recreational vehicle development order. Any credits not so claimed will be deemed waived by the feepayer.~~

~~(d) Once used, credits will be canceled and may not be reestablished even if the permit for which they were used expires without construction.~~

~~(e) Any person seeking credits for dedication of land must meet with the city manager and city attorney and applicable staff to seek agreement on appraisal methodology and assumptions before preparing appraisals for valuation of land to be dedicated.~~

~~(Ord. No. 05-02, § 3(2-354), 1-5-2005; Ord. No. 13-21, § 1(2-354), 12-18-2013)~~

~~Sec. 2-287. Appeals.~~

~~Any decision made by the city manager or designee, or by the building official, in the course of administering this division may be appealed in accordance with those procedures set forth in chapter 4 for appeals of administrative decisions.~~

~~(Ord. No. 05-02, § 3(2-355), 1-5-2005; Ord. No. 13-21, § 1(2-355), 12-18-2013)~~

~~Sec. 2-288. Enforcement of division; penalty; furnishing false information.~~

~~A violation of this division is punishable according to section 1-5; however, in addition to or in lieu of any criminal prosecution, the city, or any community parks impact fee payer, has the power to sue for relief in civil court to enforce the provisions of this division. Knowingly furnishing false information to the city manager or designee, the building official or any other municipal official who is charged with the administration of this division on any matter relating to the administration of this division will constitute a violation thereof.~~

~~(Ord. No. 05-02, § 3(2-356), 1-5-2005; Ord. No. 13-21, § 1(2-356), 12-18-2013)~~

~~Secs. 2-289—2-309. Reserved.~~

SECTION TWO: CONFLICTS

Whenever the requirements or provisions of this amending ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements shall apply.

SECTION THREE: SEVERABILITY

If any part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reasons, such part, section, subsection, or other portion or the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City declares that no invalid or prescribed

provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision or application.

SECTION FOUR: CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS

It is the intention of the City Council for the City of Bonita Springs that the provisions of this ordinance shall become and be made a part of the Bonita Springs City Code; and that sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the City Manager, or the City Manager's designee, without need of public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

SECTION FIVE: EFFECTIVE DATE

The effective date of this ordinance shall be in accordance with Florida Statutes §163.31801, requiring ninety (90) days from its adoption date.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 16th day of May, 2018.

AUTHENTICATION:



Mayor



City Clerk

APPROVED AS TO FORM:



City Attorney

Vote:

Carr	Aye	O'Flinn	Aye
DeWitt	Aye	Quaremba	Aye
Forbes	Aye	Simmons	Aye
Gibson	Aye		

Date filed with City Clerk:

5/23/18